

## **Waste Evaluation and Enforcement Branch Staff Report**

### **Summary of the City of Ripon Compliance Review and Consideration of the Issuance of Compliance Order CO 017-002**

#### **SUMMARY**

The Department of Resources Recycling and Recovery (Department) conducted a review of the City of Ripon's (City) implementation of, and compliance with, California's Recycling of Commercial Solid Waste Law, referred to as the Mandatory Commercial Recycling (MCR) law (California Public Resources Code (PRC) sections 42649-42649.7 and California Code of Regulations (CCR) sections 18835-18839). PRC section 42649.3 requires the Department to review whether a jurisdiction has complied with, or made a good faith effort to comply with, the requirements of the MCR law. For purposes of this evaluation, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement its MCR program. The evaluation of good faith includes, but is not limited to, the factors found in PRC section 42649.3 (i)((1)-(7)).

Based on the Jurisdiction Compliance Unit (JCU) staff's observations, the following key deficiencies, as well as other details described in the report demonstrate the City has not made a good faith effort to comply with the requirements of the MCR law.

- The City did not implement a commercial solid waste recycling program that was designed to divert commercial solid waste from businesses within the City which are subject to PRC section 42649.2 and CCR section 18837.
- The City did not provide documentation supporting the efforts it has taken to notify businesses and multi-family complexes of noncompliance with the MCR law (PRC section 42649 (i)(4) and CCR section 18838 (a)(2)).
- The City's Annual Reports for 2012, 2013, 2014, and 2015, submitted on or before the August due date, were incomplete regarding implementation of the requirements of the MCR law (PRC section 42649.3 (g) and CCR section 18838 (h)). Follow-up by Local Assistance and Market Development (LAMD) and JCU staff did result in some additional information, however, reporting was still incomplete and did not provide details to support that the City made all reasonable and feasible efforts to implement the following components of their program:
  - Identification
  - Monitoring
  - Education and Outreach

Based on JCU staff's review and analysis, JCU staff recommends that a Compliance Order (CO) be issued. As part of the CO, the City would be directed to develop a Local Implementation Plan (LIP). The LIP will identify a strategy for program enhancements, and local actions necessary to enable the City to meet the requirements of the MCR law.

## **JURISDICTION COMPLIANCE HISTORY**

The City does not have any prior CO's, nor has it filed for extensions to improve diversion programs to meet the diversion requirement of PRC 41780.

Based on historical records and previous findings, the City was included in the four-year Jurisdiction Review cycle.

## **BACKGROUND**

### **Statutory Requirements for Department Review and Enforcement Action**

PRC section 42649.3 requires that on and after July 1, 2012, each jurisdiction shall implement a commercial solid waste recycling program appropriate for that jurisdiction designed to divert commercial solid waste from businesses subject to PRC section 42649.2, whether or not the jurisdiction has met the requirements of PRC section 41780. Each jurisdiction is also required to report the progress achieved in implementing the MCR law, including identification, monitoring, education, outreach, and if applicable, enforcement efforts, by providing updates in the Annual Report required by PRC section 41821.

PRC section 42649.3 requires the Department to review whether a jurisdiction has complied with, or made a good faith effort to comply with, the requirements of the MCR law. For purposes of this evaluation, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement its commercial recycling program in accordance with the MCR law (PRC section 42649.3 (i)).

Pursuant to PRC section 42649.3 (g), the Department is to review a jurisdiction's compliance with the MCR law as part of the Jurisdiction Review required by PRC section 41825. The Department may also evaluate whether a jurisdiction is in compliance at any time that the Department receives information that the jurisdiction has not implemented, or is not making a good faith effort to implement its commercial recycling program (PRC section 42649.3 (h)).

In determining whether the jurisdiction has made a good faith effort to comply with the requirements of the MCR law, the Department's evaluation may include, but is not limited to, the following factors:

- The extent to which businesses have arranged for recycling services in compliance with PRC Section 42649.2, including information on the amount of disposal that is being diverted from the businesses, if available, and on the number of businesses that are subscribing to recycling services;
- The recovery rate of the commercial waste from the material recovery facilities that are utilized by the businesses;
- The extent to which the jurisdiction is conducting education and outreach to businesses;
- The extent to which the jurisdiction is monitoring businesses, and notifying those businesses that are out of compliance;
- The availability of markets for collected recyclables;
- Budgetary constraints; and
- For rural jurisdictions, the effects of small geographic size, low population density or distance to markets.

The Department is also required to consider the enforcement criteria included in its enforcement policy that was amended and approved in June 2015 (PRC section 41825 (e)(3)).

If the Department determines that the jurisdiction did not comply with, or make a good faith effort to comply with the MCR law, the Department may issue a Compliance Order.

Prior to issuing a notice of intent to issue a Compliance Order, PRC section 41825 (c)(1) requires the Department to confer with the jurisdiction for at least 60 days regarding conditions relating to the proposed order of compliance.

If, after conferring with the jurisdiction, the Department makes a determination that a compliance order should be issued, PRC section 41825 (c)(2) requires the Department to issue a notice of intent to issue a Compliance Order not less than 30 days prior to conducting the hearing to consider issuing the Compliance Order. At any time prior to the hearing, at the hearing, or after the hearing the Department may decide not to commence compliance action if it finds that the jurisdiction has made a good faith effort to implement the MCR law.

Fines of up to \$10,000 per day may be imposed if the provisions of the Compliance Order and schedule are not met by the jurisdiction (PRC section 41850).

### **The Department's Review Process**

LAMD staff's 2012-2015 review determined that the City had gaps in its MCR implementation. Based on this determination, LAMD referred the jurisdiction to JCU for an independent Jurisdictional Review. On March 30, 2017, LAMD notified the City that an independent review of the City's MCR implementation was necessary (Attachment 1). On March 30, 2017, JCU staff initiated the 60-day conferring process required by PRC Section 41825 (Attachment 2).

JCU conducted an independent jurisdictional review, which extensively reviews and analyzes data and documentation to understand a jurisdiction's MCR implementation efforts. The review included, but was not limited to:

- Communications with the jurisdiction (phone calls, emails, and letters) to learn about the community and the MCR program offered.
- Requesting approval from the jurisdiction to communicate with any of the hauler(s) (whether under contract or not) on behalf of the jurisdiction to obtain records related to, but not limited to, the total number of accounts serviced, and the total tons of collected recyclables and waste from the jurisdiction.
- Commercial cart and bin field evaluations.
- Observing and evaluating a jurisdiction's recycling and waste loads at the material recovery facility(s), transfer station(s), landfill(s), and observing the City's recycling drop-off center.
- Tracking efforts to amend or award franchise agreements or other contracts that can have an impact on a jurisdiction's implementation of the MCR program.

In March 2017, JCU began its independent review of the City's MCR program implementation, using available information from the City's Annual Reports, Department databases, and communications between the Department and the City. This review focused on the commercial

waste generators (as defined by PRC 42649.1 (c)) and multi-family residential complexes of five units or more and included visits to the City's recycling drop-off center and the City's hauler's facilities.

Concurrently, since May 2017, the City has developed an educational brochure on the City's MCR program and two questionnaires, one for businesses and one for multi-family complexes, to gather monitoring data. Both the brochure and questionnaires were mailed to entities on October 9, 2017. The City plans to conduct in-person inspections of businesses if the questionnaire is not returned to gather data and to provide notifications of noncompliance when necessary. While the City has begun efforts to conduct monitoring, the City has not specified when it will follow-up with those that do not respond and did not provide a timeline for full implementation of the recent efforts.

## **ANALYSIS**

### **Overview of Jurisdiction Demographics and Infrastructure**

#### **Existing Jurisdiction Conditions**

The City is located in San Joaquin County. According to the 2010 U.S. Census Bureau, the City encompasses approximately 5.31 square miles. The City has a population of 15,132 (Department of Finance, 2017). According to the jurisdiction's base year history (dated 1990), 87 percent of the City's total waste generation is from the non-residential waste stream.

#### **Summary of City's Solid Waste Infrastructure and Materials Flow**

Businesses and multi-family complexes determined to meet MCR requirements are serviced by permitted waste haulers. Staff observed waste bins ranging from two (2) to six (6) cubic yards. Waste collection varies depending on an account's needs. The City, with its own equipment, services smaller businesses that are not required to meet MCR requirements.

The City's Municipal Code section 8.12.130 requires that waste and recycling haulers obtain a permit to operate. The City has three permitted waste and recycling collection haulers; Waste Management and Gilton Solid Waste Management service commercial accounts and Bertolotti Disposal services industrial accounts. Commercial and industrial waste and recyclables collected by the haulers are handled in the following manner:

- Waste Management:
  - Commercial waste and recyclables are hauled to the Lodi Transfer Station and Material Recovery Facility in Lodi or Lovelace Transfer Station and Material Recovery Facility in Manteca. Recyclables are also hauled to East Stockton Recycling and Transfer Station in Stockton.
  - Waste is disposed of at Forward Landfill in Manteca or North County Landfill in Lodi.
- Gilton Solid Waste Management:
  - Commercial waste and recyclables are hauled to Gilton Resource Recovery and Transfer Facility in Modesto or Lovelace Transfer Station and Material Recovery Facility in Manteca.
  - Waste is disposed of at Forward Landfill in Manteca or Foothill Landfill in Linden.
- Bertolotti Disposal:
  - Industrial waste and recycling is hauled to Bertolotti Transfer Station in Modesto.
  - JCU staff could not determine the designated disposal facility because the City was

unable to obtain this information from the hauler and although JCU staff contacted the hauler several times, the hauler did not provide its designated disposal facility.

The City operates a self-haul recycling drop-off center that is free to the public and open twenty-four hours a day, seven days a week. Source-separated recyclables are collected at the drop-off center and hauled by the City to the following third-party recyclers:

- Cardboard, mixed paper, newspaper, and plastic is recycled by American Recycling in Modesto.
- Glass is recycled by East Stockton Recycling in Stockton.
- Polystyrene #6 (Styrofoam) is recycled by Dart Manufacturing.
- E-waste is recycled by Onsite Recycling in Stockton.

### **Findings and Observations of the Jurisdiction's Mandatory Commercial Recycling Program**

Below is a detailed analysis of the City's program, and the City's efforts to implement the program, the law and reporting requirements. The analysis includes the program deficiencies, which lead to the determination of good faith effort or lack thereof.

Commercial businesses that generate four (4) cubic yards or more of waste per week, and multi-family complexes of five (5) or more units must comply with the MCR law. Described below are staff's findings of what was found at both commercial businesses, multi-family complexes, and at the solid waste and recycling facilities accepting the materials produced by the jurisdiction. Since multi-family complexes are serviced on the same routes as businesses, the solid waste and recycling facilities analysis reflects what is happening with the MCR waste stream as a whole. JCU staff's field visit photo report (Attachment 3) contains visual documentation of many of the observations detailed below.

#### **Commercial Business Diversion**

##### *About the Program and Efforts:*

**On-Site Collection:** Participation in the City's commercial recycling program is voluntary. All three of the City's permitted haulers offer recycling services. Service frequency and bin size varies depending on an account's service needs. Materials accepted for recycling include paper, cardboard, glass, plastic, metals, bottles, and cans.

**Self-Haul:** The City operates a free public recycling drop-off center. Through the center, source-separated cardboard, newspaper, mixed paper, glass, plastic and aluminum CRV beverage containers, polystyrene #6 (Styrofoam), junk plastic, and electronic waste is collected. The unmanned center is open twenty-four hours a day, seven days a week.

**Recent Efforts by the City:** Since March 2017, the City has developed an educational brochure and a questionnaire for businesses to gather monitoring data. The City reported that many businesses and manufacturers use the drop-off center and the questionnaire will gather data on drop-off center use by MCR businesses. The City reported that the brochure and questionnaire were mailed October 9, 2017 and that the City will follow up with businesses that do not respond by conducting in-person inspections. The City has not specified when it will follow-up with those that do not respond and did not provide a timeline for full implementation of the efforts.

*Facts and Observations Related to On-Site Commercial Business Recycling Efforts:*

- JCU staff analyzed the hauler lists provided by the City to determine the number of businesses subject to MCR. JCU's analysis determined that the City reports having 91 commercial solid waste collection accounts that meet the MCR definition of a business and are required to recycle under the MCR law. Out of the 91 accounts that are required to recycle, the City reports 17 accounts are subscribed to recycling service and six (6) businesses recycle through self-hauling including all schools within Ripon Unified School District. This is a participation rate of 25.2 percent.
- JCU staff visited 35 businesses subject to MCR. JCU staff found that ten (10) businesses had recycling service. JCU staff's visual observations of the recycling bins found low contamination.
- Staff found bins at the drop-off center are clearly marked identifying source-separated cardboard, newspaper, mixed paper, glass, plastic and aluminum CRV beverage containers, polystyrene #6 (Styrofoam), junk plastic, and electronic waste. Staff observed contamination to be less than 5 percent. The City reported to JCU staff that many businesses use the drop-off center. However, when asked, the City did not have data regarding use of the drop-off center by commercial businesses as the center is unmanned. During JCU staff's site visit it was learned that two (2) MCR businesses self-haul recyclables to the City's drop-off center. No other information was obtained. Without information, JCU staff is unable to determine whether the drop-off center is an effective part of the City's MCR program.
- The City reported and staff observed in the field that businesses prepared recyclables for back hauling. Staff observed five (5) businesses back-hauling materials that included baled cardboard, wood pallets, and other recyclables. The City was not able to provide data on the total number of businesses that back-haul. Without this information, JCU staff was unable to determine whether back-hauling is an effective part of the City's MCR program.

*Facts and Observations Related to On-Site Commercial Business Waste Collection:*

- JCU observed primarily four (4) cubic yard waste bins at different businesses throughout the City. For businesses without recycling service, JCU staff observed that waste bins contained approximately 15-20 percent recyclable material including mixed paper and cardboard. Recyclables observed in waste bins at businesses with recycling bins present were less than 5 percent on average.

*Multi-Family Complex Diversion*

*About the Program and Efforts:*

**On-Site Collection:** Participation in the City's commercial recycling program is voluntary. All three of the City's permitted haulers offer recycling services. Service frequency and bin size varies depending on an account's service needs. Materials accepted for recycling include paper, cardboard, glass, plastic, metals, bottles, and cans.

**Self-Haul:** The City operates a free public recycling drop-off center. Through the center, source-separated cardboard, newspaper, mixed paper, glass, plastic and aluminum CRV beverage containers, polystyrene #6 (Styrofoam), junk plastic, and electronic waste is

collected. The unmanned center is open twenty-four hours a day, seven days a week.

**Recent Efforts by the City:** Since March 2017, the City has developed an educational brochure and a questionnaire for multi-family complexes to gather monitoring data. The City reported that the brochure and questionnaire were mailed October 9, 2017 and that the City will follow up with multi-family complexes that do not respond by conducting in-person inspections. The City has not specified when it will follow-up with those that do not respond and did not provide a timeline for full implementation of the efforts.

*Facts and Observations Related to On-Site Multi-Family Complex Recycling Efforts:*

- JCU staff analyzed the hauler lists provided by the City to determine the number of multi-family complexes subject to MCR. The City reports having eight (8) multi-family complexes that meet the MCR definition of a multi-family complex and are required to recycle under the MCR law. The City reported that no multi-family complexes subscribe to recycling services and two (2) multi-family complexes recycle through self-hauling. This is a total participation rate of 25 percent.
- During JCU staff's field visit, two (2) multi-family complexes were visited. At the first multi-family complex no recycling bins were observed and it was not reported by the City as self-hauling. At the second complex visited, JCU staff confirmed the complex self-hauls to the City's drop-off center, as reported by the City.
- Staff found bins at the drop-off center are clearly marked identifying source-separated cardboard, newspaper, mixed paper, glass, plastic and aluminum CRV beverage containers, polystyrene #6 (Styrofoam), junk plastic, and electronic waste. Staff observed contamination to be less than 5 percent. When asked, the City did not have data regarding use of the drop-off center by multi-family complexes as the center is unmanned. Without this information, JCU staff was unable to determine whether the drop-off center is an effective part of the City's MCR program.

*Facts and Observations Related to On-Site Multi-Family Complex Waste Collection:*

- JCU observed four (4) cubic yard waste bins at the first multi-family complex, which was not recycling and found approximately 25 percent recyclables in the waste bins. At the second multi-family complex, which reported to self-haul recyclables, staff was unable to view the waste bins due to lack of accessibility.

*Jurisdiction Compliance with the Notification Requirement of Noncompliant Commercial Businesses and Multi-Family Complexes*

As outlined in PRC section 42649.3 (d), a jurisdiction's solid waste recycling program shall include education, outreach to, and monitoring of, businesses. A jurisdiction is also required to notify those businesses and multi-family complexes that are not in compliance with PRC section 42649.2. Below outlines the City's efforts to comply with the notification aspect of the MCR law.

*Facts and Observations:*

- Staff was unable to verify, nor did the City provide any documentation regarding efforts made in 2012, 2013, 2014, or 2015 to support implementation of this requirement.
- In 2017, when JCU staff inquired what the City's efforts were in notifying noncompliant businesses and multi-family complexes, the City responded that:

- Notifications are verbally provided to noncompliant businesses during in-person inspections, and no other method of notification is employed. Inspections are not conducted on a regular basis and not all MCR businesses are inspected and notified, as the City lacks the necessary staffing resources. The City did not provide any documentation regarding the in-person inspections, including which businesses were visited, which businesses received verbal notifications, and when inspections took place, as the City did not keep records of their verbal notification program.
- The City reported to JCU staff that it plans to notify all noncompliant businesses and multi-family complexes of the requirements to participate in the City's MCR program through continuing in-person inspections and providing verbal notifications. The City has not specified when it will follow-up with its intended notification plan.

In summary, the City was not able to provide documentation supporting whether all noncompliant MCR businesses and multi-family complexes were notified of the requirement to participate in the City's MCR program.

#### Solid Waste and Recycling Facility Facts and Observations

Based on hauler lists provided by the City, staff found that Gilton services approximately 69 percent of MCR businesses in the City, Waste Management services approximately 26 percent, and Bertolotti services approximately 5 percent. Staff visited the Gilton Resource Recovery and Transfer Facility because it was reported that this facility was doing mixed waste processing. Staff found that waste loads are not undergoing mixed waste processing before being transferred to the designated disposal facility. Gilton informed JCU staff that commingled recycling loads undergo material recovery but at the time of staff's visit, this activity was not observed. JCU staff's correspondence with Waste Management found that commingled commercial recycle loads at its Transfer Station and Material Recovery Facility undergo material recovery processing and commercial waste loads do not. JCU staff's correspondence with Bertolotti Disposal found that waste loads brought to its Transfer Station do not undergo mixed waste processing. East Stockton Recycling and Transfer Station only accepts recyclables which undergoes material recovery processing. Staff requested and was unable to obtain information from Lovelace Transfer Station and Material Recovery Facility regarding its processes.

#### Conclusions:

*The City reported a participation rate of 25.2 percent of businesses and 25 percent of multi-family complexes. With regards to the City's drop-off center, the City did not have data regarding the impact it may have on the reported participation rate. JCU staff, through interviews with two (2) businesses, learned that they were self-hauling their recyclables to the City's drop-off center. Additionally, through the field observations, staff identified five (5) businesses that back-hauled their own recyclables. These additional businesses increased the City's participation rate to 32.9 percent for businesses. Staff did not identify any additional efforts by multi-family complexes during staff's field visit, therefore the participation rate remains 25 percent. Furthermore, the City has not reported or demonstrated compliance with the requirement to notify all noncompliant businesses for years 2012-2015. In response to staff's request for information regarding the City's current efforts, the City did not provide a timeline for full implementation of the notification plan. Based on staff's field visit to the City*



*and the data collected and discussed above, the City has not demonstrated that it has made all reasonable and feasible efforts to implement a program designed to recycle commercial waste from businesses or from multi-family complexes subject to the MCR law.*

### **Jurisdiction Compliance with the Annual Reporting Requirement**

Pursuant to PRC section 42649.3 (g) and CCR section 18838 (h) each jurisdiction is required to report the progress achieved in implementing the MCR law, including identification, monitoring, education, outreach, and if applicable, enforcement efforts. PRC section 42649.3 (g) requires the jurisdiction to include its progress in the Annual Report required by PRC section 41821. Below is a detailed analysis of the City's reporting efforts and includes reporting deficiencies which lead to the Department's determination of good faith effort or lack thereof.

Summary: JCU conducted an analysis of the City's 2012, 2013, 2014, and 2015 Annual Reports and prepared a chart of its findings regarding the information reported in the City's Annual Reports for the years covered by this review. The 2016 Annual Report is currently under review by LAMD and was not considered in this staff report.

	Review Period				Additional Data
	2012	2013	2014	2015	2017**
MCR Businesses	26	Not Reported	Not Reported	Not Reported	91
MCR Businesses Recycling	6	6	6	6	30
MCR Businesses Not Recycling	Not Reported	Not Reported	Not Reported	Not Reported	61
MCR Multi-Family	14	Not Reported	Not Reported	Not Reported	8
MCR Multi-Family Recycling	Not Reported	Not Reported	Not Reported	Not Reported	2
MCR Multi-Family Not Recycling	Not Reported	Not Reported	Not Reported	Not Reported	6

*\*\*2017 data reflects the data reported by the City in response to JCU's inquiry and includes the additional data collected through staff's field observations.*

- **Identification**

A jurisdiction is required to identify businesses that dispose of four (4) or more cubic yards of commercial solid waste per week and multi-family residential complexes of five (5) units or more (CCR section 18838 (a)(2)). The jurisdiction must report its progress in identifying these businesses in its Annual Report. As indicated by the above chart:

- In 2012, the City identified the total number of commercial businesses and multi-family complexes subject to the MCR law. No additional identification data was reported by the City regarding the number of businesses and multi-family complexes that fell under MCR in subsequent years.
- During LAMD's 2014 site visit with the City, the City reported that 20 businesses, 14

- multi-family complexes, and 6 schools fell under MCR. This information was included in LAMD's staff notes within the 2014 Annual Report.
- The 2015 Annual Report reported that the local haulers conducted a census to determine the number of commercial properties that fell under MCR so that the City could provide information to businesses. However, the City did not report the data gathered from the census and did not demonstrate how this impacted the City's efforts in the Annual Report. During LAMD's 2015 site visit with the City, the City reported that 20 businesses, 14 multi-family complexes, and 6 schools fell under MCR. This information was included in LAMD's staff notes within the 2015 Annual Report.
  - As part of JCU's request for data on the jurisdiction's 2017 MCR program efforts, the City provided documentation of identification of businesses and multi-family complexes and stated that in 2015 the City began collecting customer lists from haulers to identify businesses and multi-family complexes subject to MCR. Staff analyzed the hauler lists provided by the City in 2017 to determine the current number of MCR businesses and multi-family complexes and input this number into the above table for 2017, including additional data from staff's field visit. The number of businesses and multi-family complexes identified by JCU staff in 2017 is inconsistent with the reported data in the 2012 Annual Report, which indicates deficiencies in the City's identification efforts. The City stated that it did not regularly identify accounts subject to MCR due to limited staffing.
  - **Monitoring**  
A jurisdiction is also required to monitor businesses and multi-family complexes subject to the MCR law to determine whether they are recycling (CCR section 18838 (a)(2)) and report on those efforts in the Annual Report.
    - In 2012-2015, the City consistently reported monitoring information for schools and City facilities in the Annual Report. Ripon Unified School District partners with the City to operate the drop-off center program, and schools as well as City facilities self-haul recyclables to the center. The City reported that six (6) schools participate in the City's program as shown in the table, but not the number of participating City facilities. The City did not provide its progress on the monitoring of all businesses and multi-family complexes subject to MCR in the Annual Report. Therefore, JCU staff is unable to analyze the effectiveness of the City's program.
    - During LAMD's 2014 site visit with the City, the City reported that six (6) businesses, five (5) multi-family complexes, and six (6) schools subject to MCR were recycling. This information was included in LAMD's staff notes within the 2014 Annual Report.
    - The 2015 Annual Report reported that the City was working with the permitted haulers to establish a database of businesses that are within the MCR threshold to monitor compliance. However, the City did not report the data gathered from the census and did not demonstrate how this impacted the City's efforts in the Annual Report. During LAMD's 2015 site visit with the City, the City reported that seven (7) businesses, six (6) multi-family complexes, and six (6) schools subject to MCR were recycling. This information was included in LAMD's staff notes within the 2015 Annual Report.

- In 2017, when JCU staff inquired on monitoring, the City reported that the City began collecting customer lists from its haulers to monitor compliance in 2015. However, the City stated that its primary method of monitoring is through visual inspections conducted by City staff, with the most recent inspections focusing on multi-family complexes in January 2017, as noted earlier. The City reported that these inspections were not regularly conducted and did not monitor all MCR businesses, as the City lacks the necessary staffing resources. No data or documentation of these monitoring efforts have been provided to support these efforts. This reported effort is not consistent with the efforts reported within the 2012-2015 Annual Reports as the City did not report on in-person monitoring nor provide the data gathered from the inspections in the Annual Reports. The City reported that many businesses use the drop-off center and that questionnaires to businesses and multi-family complexes to track compliance through back hauling, self-hauling, or third-party recycling were mailed October 9, 2017.
- **Education and Outreach**  
*About the Efforts:*  
For the reporting period of 2012-2015, the City reported on print education and outreach efforts. Within the response to JCU's staff 2017 inquiry the City reported that print, direct contact, and online education and outreach are provided.

*Facts and Observations:*

The following was reported within the Annual Reports:

- In the 2012 Annual Report, the City reported that its education and outreach efforts consisted of an educational letter mailed by the City to businesses and multi-family complexes.
- In 2013 and 2014 Annual Reports, the City reported no education and outreach efforts.
- In the 2015 Annual Report, the City reported new businesses subject to MCR were being informed of MCR requirements without any description of the nature and type of information that was provided.
- In 2017, when JCU inquired on education and outreach efforts:
  - The City reported to JCU staff that information regarding the City's MCR program is available on the City's website; however, JCU staff did not find education regarding the requirements of MCR on the City's website. The website provides information on the drop-off center, which is part of the City's MCR program, but does not explain that self-haulers can bring their recyclables to the center in order to comply with the MCR requirements.
  - The City reported to JCU staff that the most recent print education was distributed in 2013 by mail. The City provided documentation of this effort to JCU staff when requested. This effort reported to JCU staff conflicts with the 2013 Annual Report in which no education and outreach efforts were reported.
  - The City developed an educational brochure that was mailed to commercial businesses and multi-family complexes on October 9, 2017. The City said it may discuss with its haulers additional means of education and outreach.

- Direct contact education on the requirements of MCR and compliance options is provided verbally by City staff during visual inspections of businesses and multi-family complexes subject to MCR. The City reported that these inspections were not conducted regularly and did not monitor all MCR businesses, as the City lacks the staffing resources. The City did not report on in-person education and outreach efforts within the Annual Reports. No data or documentation of these education and outreach efforts has been provided to support these efforts. As noted earlier, the City reported that the most recent inspections were conducted in January 2017 at the multi-family complexes throughout the City.
- **Enforcement (Optional)**  
The City did not indicate in its 2012, 2013, 2014, and 2015 Annual Reports that the City elected to include enforcement as part of their implementation of the MCR law. As part of JCU's 2017 inquiry, the City did not report any enforcement authority currently within the City's ordinances. Accordingly, JCU has not considered enforcement in its analysis.

Conclusions:

*Based upon the facts and observations above, the City has not made all reasonable and feasible efforts to identify, monitor, and did not report complete and accurate information on an annual basis regarding the businesses and multi-family complexes that are subject to the MCR law.*

*The City provided some education and outreach for 2012, 2013, 2014, and 2015 but, although requested, has not provided materials to JCU staff supporting all the efforts taken and did not fully report on these efforts in the Annual Reports. Accordingly, the City has not made all reasonable and feasible efforts to implement and report on the education and outreach to businesses and multi-family complexes that are subject to the MCR law.*

In addition to the observations and conclusions described above, the Department also evaluated the factors in PRC section 42649.3 (i)(1)-(7)<sup>1</sup>. The following is a summary of staff's analysis of the factors, and the City's efforts:

<b>PRC section 42649.3 (i)(1)-(7) Factor</b>	<b>Staff's Consideration</b>	<b>Staff's Finding</b>
(1) Extent to which businesses have complied with PRC section 42649.2, including information on amount of disposal being diverted (if available) and the number of businesses that are subscribing to service.	For 2017, the City reports a 25.2 percent participation rate for businesses and 25 percent for multi-family complexes. Through JCU staff's field observations, additional businesses were found to be recycling which increased the City's participation rate for businesses to	Does not demonstrate good faith effort.

<sup>1</sup> In determining whether the City made a good faith effort to implement its selected commercial recycling program, the Department may consider, but is not limited to, the factors presented in PRC section 42649.3 (i)(1)-(7).)

	32.9 percent. The multi-family complex participation rate remains at 25 percent.	
(2) The recovery rate from the material recovery facilities that are utilized by the businesses.	A request was made of the City and haulers for information regarding the recovery rate for the material recovery facilities utilized by the businesses. Bertolotti reported a 30 percent diversion rate, Waste Management reported 2 percent, and Gilton did not respond to data requests made by JCU staff.	Does not demonstrate good faith effort.
(3) The extent to which the jurisdiction is conducting education and outreach.	The City has provided some but not all documentation supporting the efforts taken to implement education and outreach.	Does not demonstrate good faith effort.
(4) The extent to which the jurisdiction is monitoring businesses, and notifying those businesses that are out of compliance.	The City has not provided documentation supporting the efforts taken to implement monitoring and notifying those businesses that are out of compliance.	Does not demonstrate good faith effort.
(5) The availability of markets for collected recyclables.	The City is located in a metropolitan area and is not limited by geography or infrastructure to markets any more than other jurisdictions in the State.	Is not a consideration.
(6) Budgetary constraints  (Note: PRC section 42649.6 allows a jurisdiction to charge and collect a fee from a commercial waste generator in order to recover the jurisdiction's cost incurred in complying with MCR.)	The City has not indicated that budgetary constraints was a factor in its failure to comply with the MCR law. The City reported it does have limited staffing.	Is not a consideration.
(7) In the case of a rural jurisdiction, the effects of small geographic size, low population density, or distance to markets.	The City is not a rural community.	Is not a consideration.

### **Communications and Notification History**

March 30, 2017, LAMD notified the City that an independent review of the City's waste management programs was necessary (Attachment 1).

March 30, 2017, JCU staff initiated the 60-day conferring process required by PRC Section 41825 (Attachment 2).

October 13, 2017, the Department mailed the 30-Day Notice of Intent to Issue the City of Ripon a Compliance Order for Failure to Implement the Mandatory Commercial Recycling (MCR) law (Attachment 4).

### **Findings**

Based on a review of the City's MCR program and reporting, JCU staff finds that the City has not demonstrated that it has made all reasonable and feasible efforts to comply with the requirements of the MCR law (PRC 42649, et al.). In summary:

- The City did not implement a commercial solid waste recycling program that is designed to divert commercial solid waste from businesses subject to PRC section 42649.2. Staff found a lack of recycling bins present at MCR businesses and multi-family complexes, and a lack of documentation to support other efforts as discussed within this analysis.
- The City did not provide supporting documentation that it had notified businesses and multi-family complexes of their noncompliance with the MCR law.
- The City's Annual Reports for 2012, 2013, 2014, and 2015, submitted on or before the August due date, were incomplete regarding implementation of the requirements of the MCR law. Follow-up inquiries by LAMD and JCU staff did result in some additional information, however, reporting was still incomplete and did not provide details to support that the City made all reasonable and feasible efforts to implement the following components of their program:
  - Identification
  - Monitoring
  - Education and Outreach

### **Options for Consideration**

1. Find that the City is not complying with the MCR law as noted above and,
  - a. Approve the attached Compliance Order as written, or
  - b. Approve the attached Compliance Order with alternate or additional language or conditions.
2. Find that the City has achieved a Good Faith Effort and is adequately complying with the MCR law and not issue the attached Compliance Order.
3. Find that the City is in compliance with the MCR law and not issue the attached Compliance Order.

### **Staff Recommendation**

Department staff recommends Option 1: Find that the City is not complying with the MCR law and approve the attached Compliance Order as written. This recommendation is based on the

findings presented within this report which support that the City of Ripon has not complied with, or made a good faith effort to comply with, the MCR law.

The proposed Compliance Order CO 017-002 (Attachment 5) includes the following conditions and implementation schedule:

- The City shall work with Department staff to determine the MCR gaps and develop a Local Implementation Plan (LIP) to improve, expand, or implement new MCR programs and/or efforts.
- The City shall develop and submit to the Department a fully executed LIP by January 31, 2018.
- The City will fully implement the programs and/or efforts in the LIP by June 30, 2018.
- A monitoring/“oversight” period from July 1, 2018 through December 31, 2018. The Department uses this time to ensure the City has continued implementation of the programs identified in the LIP.
- The City will submit quarterly status reports based on the calendar year. These status reports shall use the Department’s electronic reporting format. The City will also attach any required documentation necessary to support their efforts to implement the LIP and Compliance Order.

The Compliance Order requires the Department to hold a public hearing following the term of the compliance schedule to determine whether the City has complied with all of the conditions of the Compliance Order.

The Compliance Order specifies that, at any time, any failure of the City of Ripon to comply with any part of the Compliance Order may result in an earlier public hearing and fines of up to \$10,000 per day. Likewise, a public hearing could be scheduled earlier if the City complies with the Compliance Order ahead of schedule.

## **ATTACHMENTS**

1. March 30, 2017, LAMD notified the City that an independent review of the City’s commercial waste management program was necessary
2. March 30, 2017, City of Ripon’s Notice of 60-Day Conferring Period for Potential Compliance Enforcement
3. Photo Report for the City of Ripon
4. October 13, 2017, 30-Day Notice of Intent to Issue the City of Ripon a Compliance Order for Failure to Adequately Implement and meet the Requirements of the Mandatory Commercial Recycling Law
5. Proposed Compliance Order CO 017-002
6. Request for Action for Consideration of the Issuance of Compliance Order CO 017-002 to the City of Ripon

## **STAFF RESPONSIBLE FOR ITEM PREPARATION**

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